

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

JANICE BUSH, as Special Administrator for
the Estate of Ronald Garland, deceased,

Plaintiff,

v.

BRET BOWLING, in his individual and
official capacity as Sheriff Creek County,
Oklahoma, et al.,

Defendants.

Case No. CIV-19-98-GKF-FHM

DEFENDANTS' UNOPPOSED MOTION TO FILE SUR-REPLY

Defendants Bret Bowling, in his individual and official capacity as Sheriff of Creek County, Oklahoma; Board of County Commissioners of Creek County, Oklahoma; Commissioners Newt Stephens, Leon Warner, and Lane Whitehouse; and Joe Thompson ("Defendants"), by and through counsel of record, respectfully request this Court pursuant to Local Rule 7.2(h) to file a Sur-Reply to the Plaintiff's Reply regarding the Plaintiff's Motion for Sanctions filed on February 10, 2020 (Dkt. 192). In support of this Motion, Defendants state as follows:

1. On February 10, 2020 the Plaintiff filed a Motion for Sanctions with regard to alleged issues of video preservation in this case (Dkt. 192). Within this Motion for Sanctions, the Plaintiff attached 25 exhibits, including a "Declaration" from Lance Watson of Avansic, Inc. who performed the forensic review of the server boxes in question (Dkt. 192-4). Plaintiff's Motion for Sanctions contained 24 other exhibits including interviews, video, depositions, screen shots from video produced, as well as Orders from other litigation.

2. In response to this Motion for Sanctions, the Defendants filed a detailed Response with affidavits and exhibits of their own (Dkt. 214).

3. Plaintiff, thereafter on March 27, 2020, filed a Reply to this Motion for Sanctions (Dkt. 229). Attached to this Reply was new evidence, including a second “Declaration” from Avansic, which was only produced to these Defendants the day of the filing of Plaintiff’s Reply and contains new information and evidence in this case. The Plaintiff used the second “Declaration” from Avansic to make further allegations, and or, inferences regarding the conduct of these Defendants or others. These Defendants would therefore like the opportunity to address this new evidence in their Sur-Reply.

4. These Defendants respectfully the opportunity to file a brief Sur-Reply to address Avansic’s second “Declaration”, as well as the additional evidence of Policy 5.1 attached as Exhibit 2 to the Plaintiff’s Reply. These Defendants understand that a filing of a Sur-Reply is not encouraged under the Local Rules; however, in this specific instance the use and attachment of additional new evidence to Plaintiff’s Reply makes the filing of a brief Sur-Reply a necessity.

5. Counsel for the Defendants has contacted Plaintiff’s counsel with regard to the filing of a Sur-Reply and Plaintiff’s counsel has no objection to the Sur-Reply as long as the Sur-Reply does not contain “new matters”.

6. This request is not made for the purposes of prejudice, delay, or to burden the Court with repetitious argument already made in their Response. This Sur-Reply is only requested for the purpose of addressing the new evidence and arguments attached by Plaintiff in her Reply.

WHEREFORE, based upon the above and foregoing, Defendants Bret Bowling, in his individual and official capacity as Sheriff of Creek County, Oklahoma; Board of County Commissioners of Creek County, Oklahoma; Commissioners Newt Stephens, Leon Warner, and Lane Whitehouse; and Joe Thompson (“Defendants”) respectfully request this Court leave to file

a Sur-Reply no more than ten pages in length as per the Local Civil Rule 7.2(h) of the District Court Rules for the United States District Court for the Northern District of Oklahoma. A proposed Order granting the requested relief will be submitted herewith.

Respectfully submitted,

s/ Michael L. Carr

Michael L. Carr, OBA No. 17805
Ambre C. Gooch, OBA No. 16586
COLLINS, ZORN & WAGNER, P.C.
429 N.E. 50th Street, Second Floor
Oklahoma City, OK 73105
Telephone: (405) 524-2070
Facsimile: (405) 524-2078
Email: mlc@czwlaw.com
acg@czwlaw.com

ATTORNEY FOR DEFENDANTS BRET
BOWLING, BOARD OF COUNTY
COMMISSIONERS OF THE COUNTY OF
CREEK, NEWT STEPHENS, LEON
WARNER, LANE WHITEHOUSE AND
JOE THOMPSON

CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2020, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Mitchell D. Garrett, Jr., email at: mitchell@garrett.legal
GARRETT LAW
320 S. Boston Avenue, Suite 825
Tulsa, OK 74103

Steven J. Terrill, email at: sjterrill@bryanterrill.com
J. Spencer Bryan, jsbryan@bryanterrill.com
BRYAN & TERRILL LAW, PLLC
3015 E. Skelly Drive, Suite 400
Tulsa, OK 74105
Attorneys for Plaintiff

Randall J. Wood, email at: rwood@piercecouch.com
Jessica L. Dark, email at: jdark@piercecouch.com
Charles A. Schreck, email at: cschreck@piercecouch.com
PIERCE COUCH HENDRICKSON
BAYSINGER & GREEN, L.L.P.
1109 N. Francis
Oklahoma City, OK 73126-0350
***Attorney for Defendants Jeffrey Labbee,
Christopher Fetters and Brandon Fulks***

Anthony Winter, email at: awinter@johnsonhanan.com
Sean P. Snider, email at: ssnider@johnsonhanan.com
JOHNSON HANAN VOSLER HAWTHORNE & SNIDER
9801 N. Broadway Extension
Oklahoma City, OK 73114
***Attorneys for Defendant Kerri Janes and
Turn Key Health Clinics, LLC***

James L. Gibbs, II, email at: jgibbs@gphglaw.com
Elise M. Horne, email at: ehorne@gphglaw.com
GOOLSBY, PROCTOR, HEEFNER & GIBBS, P.C.
701 N. Broadway Avenue, Suite 400
Oklahoma City, OK 73102-6006
Attorney for Defendant Lance Prout

s/ Michael L. Carr

Michael L. Carr